LOONG HENG SUN

v.

COLLECTOR OF LAND REVENUE, KEDAH

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[LAND REFERENCE NO. 15-23-87]
31 MARCH 1992

LAND LAW: *Compulsory acquisition - Comparable Lots - Whether post notification transactions can be used as pointer - Transactions which afford fair criterion of value.*

The objector's parcel of land (scheduled land) was compulsorily acquired by the respondent. The Collector valued the scheduled land at RM21,000 per relong. The relevant date (valuation date) for calculating the market value was taken as 7 June 1984, the date on which the declaration was published in the *Gazette.*

The Government valuer used four Lots as comparable Lots to arrive at this valuation which the Collector accepted. All four Lots were acquired before 7 June 1984. The objector disputed that these Lots could measure up to the scheduled land and adduced evidence of the sale of two other Lots which took place shortly after the acquisition of the scheduled land and argued that they were better comparable Lots.

Held:

[1] There may be other reasons for attaching little or no value to post notification transactions, and that would depend on the peculiar circumstances of each case but ordinarily if post notification transactions are close in time to the valuation date of the scheduled land and the Lots possess features which are more or less similar to the Lot of which the scheduled land forms part, such transactions do afford a pointer as to whether the value given for the land compulsorily acquired is fair or not.

[2] In the light of the evidence the Court awarded the objector compensation in the sum of RM312,000 for the scheduled land.

[Award increased. Costs of reference to be paid by Collector. Interest of 8% per annum on the difference between Collector's award and Court's award.]

Cases referred to:

Ng Thiou Hong v. Collector Of Land Revenue Gombak [1984] 1 CLJ (Rep) 289 ***(not foll)***

Assistant Development Office v. Tayaballi [1933] AIR Bombay 331 ***(foll)***

Legislation referred to:

Land Acquisition Act 1894 [Ind], s. 24
Land Acquisition Act 1960, ss. 8, 14, 38(5), 48, First Schedule s.1(2A)

For the objector - Tan Seng Jui; M/s. Jin-Nge & Co.
For the collector of land revenue - Hasan b. Lah

JUDGMENT

KC Vohrah J:

This is a reference under s. 38(5) of the Land Acquisition Act 1960 (the Act), by the Collector of Land Revenue, Kuah, District of Langkawi (the Collector) after a compensation award he made under s. 14 was objected to. The person awarded the compensation (the objector)

objects to the award of the Collector made in respect of a parcel of land comprised in Lot 194, SPK 27, Mukim of Kuah, District of langkawi. This parcel of land (the scheduled land) was compulsorily acquired by the Kedah State Government pursuant to a declaration published in the *Gazette* dated 7 June 1984, under s. 8 of the Act. The scheduled land that was acquired amounts to 4.8288 relongs or 6 acres 3 roods 38.3 poles.

The Collector valued the scheduled land at RM21,000 per relong which works out to 67.79c per square foot. The relevant date (the valuation date) for calculating the market value was taken as 7 June 1984, the date on which the declaration was published in the *Gazette* that the land was to be acquired under the Act.

Scheduled Land

Lot 194 of which the scheduled land is part, situated about 3 kilometres from the town of Kuah, is a first layer Lot with a wide frontage abutting on a laterite road. The then laterite road was nor far, about 0.6 kilometre, from the Jalan Kuah-Ulu Melaka road which was serviced by public transport. The land is below the road level but slopes up from the road and presumably, as submitted by Counsel for the applicant, and what he submits is quite sensible, there was no need to purchase laterite earth to fill up the lower level to level the scheduled land with the road since earth from the higher level could have been used for that purpose. The scheduled land was surrounded by padi, kampong and rubber land. It was Malay reservation land owned by a non-Malay which meant that it could have been sold to anyone, irrespective of race. There was no co-owner to the land, it being registered in the name of the objector as trustee. And the category of land use was "rubber". Water and electricity supplies were nearby as these were supplied to the kampongs along the Jalan Kuah-Ulu Melaka road.

The Government Valuer used four Lots, Lots 426, 182, 612 and 107 as comparable Lots to arrive at his valuation which the Collector accepted. The objector disputed that these Lots could measure up to the scheduled land and adduced evidence of the sale of two Lots, Lots 680 and 1572, which took place shortly after the acquisition of the scheduled land and argued that they were better comparable Lots.

Lots 426

Lot 426 was sold on 3 October 1982. Its only positive feature is that it is within the town board area and, therefore, nearer to the amenities and perhaps faster development of a town area. This was, however, far outweighed by several inferior features. It was a smaller Lot. It was also a second layer Lot; there was no road frontage although the road, one layer away, was then a metalled road. The evidence showed that it was between 0.5 metre to 1.5 metre below sea level and the Government Valuer admitted that the Lot was swampy and would have been under sea water during high tide and that it would have required earth filling before it could be developed. The land was sold at 41C, per square foot. This clearly inferior Lot was sold some 1 year and 8 months before the valuation date of the scheduled land.

Lot 182

The second Lot that the Government Valuer used as a comparable Lot was Lot 182. A 2/20 undivided share of this Lot was sold. It is a smaller portion than the Lot that the scheduled land formed part of. The Government Valuer agreed it is more difficult to sell only a portion of an undivided share when compared to a Lot not similarly disadvantaged like the scheduled land and that seems quite obvious. The evidence was also that the Lot had a very narrow "point" frontage; so although it was a first layer portion, the point frontage was not

sufficiently wide enough to provide an access road to it. Again the evidence showed that it was below the road level and that it needed earth filling. The Lot was Malay reservation and being owned by a Malay could and can only be sold to Malays. Lot 182 is an inferior Lot of land as compared to the scheduled land. It was transacted for 55.69c a square foot and the date of the sale was 15 October 1983, 8 months before the valuation date for the scheduled land.

Lots 426 and 182 are hardly fair comparable Lots for the many dissimilar and inferior features they possess when compared with the scheduled land.

Lot 612

The third comparable Lot referred to by the Government Valuer is Lot 612, about twice bigger in size than the Lot of which the scheduled land was part, 3 kilometres from Kuah. It is within the town board area meaning it is nearer to an area of amenities and faster development. It is a first layer Lot, off a metalled road. On these counts it is a superior Lot than the scheduled land. But the land was then about 0.5 metres below the road level and obviously required earth filling to be level with the road. There are, however, other features of the Lot when compared to the scheduled land which are also inferior. The transaction was for a ¼ undivided share which is less marketable; and the land is within Malay reservation land owned by a Malay and therefore transferable only to another Malay. The transaction was made on 8 December 1983 about 6 months before the valuation date of the scheduled land and was at RM1.06 per square foot. I shall return to this Lot later.

Lot 107

The fourth Lot that the Government Valuer took for comparison was Lot 107, a first layer Lot, off a metalled road, and only about 1 kilometre from Kuah town. It certainly had better potential on these counts. It is about 0.5 metres below the road level according to the estimation of the Government Valuer but the private valuer said it was 3 to 4 feet (0.9 to 1.2 metres) below the road level. I am unable to say who is right on this estimate but suffice it to say it requires earth to be purchased to put the land on the same level as the road. And the said Lot is about 2½ times smaller than the scheduled Lot. It is also a Malay reservation land owned by a Malay. The land was sold on 24 January 1981, 3 years 4 months before the material date at 91c per square foot.

I would like to note here that r. 1(2A) of the First Schedule to the Act provides that in assessing the market value of any scheduled land which is Malay reservation land the fact that it is such Malay reservation land should not be taken into account. It seems clear that the intent of the rule is that the restrictive nature of such land cannot be used to lower the market value when calculating the market value of a Malay reservation land which is being compulsorily acquired. The rules do not, however, say that such a factor must not be taken into account when assessing the market value of comparable Lots which are Malay reservation land and which were sold in the open market. To have rules of such effect would not make sense. It would of course not be taken into account if a comparable Lot was Malay reservation land and compulsorily acquired. Coming to the scheduled land in our case, as pointed out, it is Malay reservation land but it is owned (and that is legally allowable under the law in Kedah) by a non-Malay and can be freely sold to a non-Malay. In so far as Lots 612 and 107 are concerned they are Malay reservation land and they were owned by Malays at the time of their transaction. They were sold in the open market and due account for the restrictive nature of their being Malay reservation Lots owned by Malays has to be taken when these Lots are compared to the scheduled land in this case and the Government Valuer said that he did take account of it.

I have already said Lots 426 and 182 are not suitable as comparable Lots and therefore the amount of 67.79c per square foot for the scheduled land which appears nearer to 41c per square foot for Lot 426 and RM5.69 per square foot for Lot 182 is inordinately low. In terms of features, Lots 612 and 107 have features with which the scheduled land can compare more favourably. Lot 612 was sold 6 months before the valuation of the scheduled land, and it does appear much nearer in time as a better comparable Lot but Lot 612 is bigger in size and is within the town board area and due regard should be paid to these better features. But as I pointed out earlier there are some inferior features. The Government Valuer did take into account the restrictive nature of it being Malay reservation land owned by a Malay but he did not take into account that a less marketable undivided share was disposed off and that it would have required purchase of red earth to fill the land to bring it up to the level of the road.

As for Lot 107 I would put the wide frontage of the scheduled land and its nearness to a metalled road as almost equal to Lot 107's frontage on the metalled road but I would take into account that the scheduled land is 2 kilometres from Kuah while Lot 107 is 3 kilometres from the town. Lot 107 is also a smaller Lot and the transaction took place 3 years 4 months before the valuation of the land. In my view between Lots 107 and 612, Lot 612 is a better comparable and the Government Valuer should have relied on it to value the scheduled land.

The objector says the Government Valuer should have made an upward adjustment of 20% instead of 10% for the general increase in the price of land in calculating the value but no evidence was adduced to show that.

Post Notification Transaction

The objector, as pointed earlier, referred to two other comparables Lots; Lot 680 sold 2 months and 5 days after the valuation date of the scheduled land at RM1.36 per square foot; and Lot 1572 sold about 1 year 3½ months after the date at RM1.07 per square foot. The learned legal advisor appearing for the Collector argued that the Court should ignore these two Lots as they were sold after the valuation date of the scheduled land and he relied on *Ng Tiou Hong v. Collector of Land Revenue Gombak* [1984] 1 CLJ (Rep) 289, where Syed Agil Barakbah FJ said at p. 291:

> The safest guide is evidence of sales of similar lands of similar quality or position in the locality at or prior to the time of acquisition. The price paid for such sales can be used as comparables subject to making allowance for all circumstances.

It has to be noted, however, that nowhere is it stated in that judgment that transactions made after the valuation date of a scheduled land (post notification transactions) should be ignored. I would like to refer to the Indian case of *Assistant Development Office v. Tayaballi* [1933] AIR Bombay 361. Before the Court (of Rangnekar and Broomfield JJ) certain authorities were cited to show the post notification sales should be disregarded. Broomfield J referred to s. 24 of the Indian Land Acquisition Act 1894, where it was provided, similar to our r. 3(e) of the First Schedule to the Act, that the Court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use it will be put when acquired. He also referred to another provision in s. 24 where the Court was not to take into consideration any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. Interestingly enough our r. 2(b) provides that that should be taken into account. To come back to the case, Broomfield J had this to say at p. 363 about post notification transactions in the context of the authorities cited to the Court and the provisions of s. 24 of the Indian Act earlier referred to:

I may mention also s. 24, Land Acquisition Act in which it is provided that the Court shall not take into consideration *inter alia* any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; or any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. Nevertheless I doubt if anything can be found in those authorities which would justify the conclusion that post-notification transactions must necessarily be ignored altogether. *All transactions must be relevant which can fairly be said to afford a fair criterion of the value of the property as at the date of the notification. If any considerable interval has elapsed the Court will naturally attach little or no value to subsequent sales, just as transactions long prior to the notification will usually be discarded* ... (Emphasis added)

There may be other reasons for attaching little or no value to post notification transactions, and that would depend on the peculiar circumstances of each case but ordinarily if post notification transactions are close in time to the valuation date of the scheduled land and the Lots possess features which are more or less similar to the Lot of which the scheduled land forms part, such transactions do afford a pointer as to whether the value given for the land compulsorily acquired is fair or not.

Lots 680 and 1752, also rubber land then, are nearer to the scheduled land then the other Lots used as comparable Lots by the Government Valuer; Lot 680 is 420 metres west of, and Lot 1752 is 370 metres east of, the scheduled land. Lot 680 and the scheduled land then abutted on the same laterite road and were Malay reservation land owned by a non-Malay. Lot 1752 while it did not abut on the same road could be reached by an access road from that road. As pointed out Lot 680 was transacted at RM1.36 2 months 5 days before the valuation date of the scheduled land but it was a bigger piece of land than the scheduled land and had a regular shape and account has to be taken of these last two superior factors. Lot 1752 was transacted 1 year 3½ months later at RM1.07. What these post notification transactions show is that the valuation at 67.79c per square foot, a figure closer to the value of the inferior Lots, Lots 426 and 182, is inordinately low and it should be nearer the value given for Lot 612. In the light of the evidence and what I have discussed I think a fair figure would be RM312,000 about RM1.02 per square foot.

I therefore hold the objector should be compensated in the sum of RM312,000 for the scheduled land. Taxed costs of this reference to be paid by the Collector.

Acting under s. 48 of the Act I direct that the difference between the Court's award and the Collector's award shall carry interest of 8% per annum from the date the Collector took possession of the land until payment.

Also found at [1992] 3 CLJ 1612